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SUBJECT: CICIACS SETBACK IN CONGRESS

1. (U) This is an action request. See para 10.

2. (SBU) Summary: On May 4, the Congressional Human Rights and Government Commissions issued a joint recommendation to the plenary of Congress against CICIACS, on constitutional grounds. On May 5, President Berger and Vice President Stein both publicly and unequivocally expressed disappointment in the Commissions' votes and determination to push CICIACS forward. Faced with this setback, the Executive will attempt to avoid a vote by the plenary on CICIACS, which would certainly be unfavorable. To proceed, the Executive must now renegotiate the agreement with the United Nations. UN Senior Political Affairs Officer Martha Doggett told the Ambassador on May 5 that the UN is willing to discuss changes to CICIACS provided they preserve its potential to investigate clandestine groups. This is a serious setback, but we should not yet conclude CICIACS is dead and so ask that funding be held in reserve. End Summary.

Congressional History

3. (SBU) On April 14, the two Commissions reviewing CICIACS were divided on their decisions. While the Interior Commission advised against the proposal, the Human Rights Commission President, Nineth Montenegro (ANN), facing strong opposition and constitutional questions from Commission members, requested an opinion directly from the Constitutional Court. Unfortunately, this proved to be a tactical error (which Montenegro asserts to HROff was orchestrated by the FRG, whose members suggested the consultation within the Commission, then swiftly denounced it from the bench the next day). Montenegro immediately faced accusations from the FRG bench of violating Congressional procedures. President of Congress Morales successfully petitioned the Court not/not to review the proposal and instructed the Commissions to make a joint decision within 30 days.

4. (SBU) The opposition to CICIACS was organized by former Ambassador to the U.S. (and current FRG deputy) Antonio Arenales Forno, and Roxanna Baldetti, President of Government Commission (of the Patriot Party, a member of the ruling GANA coalition). Both argued forcefully for rejection of the proposal without requesting a constitutional review by the Court. In meetings with PolOffs, both Congressional deputies claimed the proposal was unconstitutional and would weaken rather than strengthen Guatemalan institutions by substituting for them.

5. (SBU) While a Court review could have resolved constitutionality issues, the Congressional committees chose to make that judgment for themselves. After a two-hour meeting between the Government and Human Rights Commissions on May 4, the members voted overwhelmingly to issue a negative recommendation on CICIACS to the floor of Congress. In the Government Commission, 19 voted against proposal and two in favor (ANN and UNE) and in the Human Rights Commission, seven voted against, two in favor (ANN and URNG), and three were absent. The Commissions plan to officially present this decision to the plenary on May 6. The strongly negative opinion of the two commissions virtually assured rejection of CICIACS by the plenary, should it choose to vote on the resolution.

Executive Stunned, Regrouping

6. (SBU) On May 5, President Berger called the Congressional action "absurd" and said he "deeply regretted that the initiative was stopped. We will revise the technical-legal questions and continue...so that CICIACS will come to this country." Vice President Stein commented that "if the Congress decides to obstruct this project in its current form, we will look for another way." The same day, FM Briz privately expressed chagrin to the Ambassador about the lack of discipline of Congressional members of the GANA coalition.

7. Immediately after the Congressional vote, Frank LaRue,

head of the President's Commission for Human Rights (COPREDEH), told the Ambassador that he would suggest to Vice President Stein that the Executive officially withdraw the proposal before Congress votes on it, renegotiate problematic language with the United Nations, and request a Court review before resubmitting it to Congress. However, this strategy is complicated by Congressional rules. According to the Legislative Secretariat, President Berger could legally make this request, but the plenary must approve it with a vote. If the proposal is not successfully withdrawn, the Executive would have to wait one year before submitting the measure again to Congress, unless more than 30% of the new agreement had been changed.

UN Willing to Talk

18. (SBU) On May 5, the Ambassador met with Martha Doggett, the UN lead for CICIACS, and Patrick Gavigan, head of the MINIGUA Human Rights Office. The UN is open to some renegotiation on the proposal, they said, but is not interested in investing donor funds in a water-downed agreement. The Ambassador pledged to lend support in lobbying Stein and LaRue to act swiftly and to encourage FRG Congressmen Arenales to be open-minded about allowing the Executive to find a viable solution with the UN on CICIACS to address sovereignty and constitutionality concerns. Arenales subsequently expressed his willingness to cooperate to the Ambassador, specifically to refrain from deep-sixing CICIACS before the Executive branch can renegotiate it with the UN.

Comment

19. (SBU) The setback in Congress, abetted by members of its own GANA coalition, has embarrassed the Berger Government, which had been publicly supportive of CICIACS and had been categorical on the subject with USG officials in Washington. It reflects both a lack of attention on the part of the Executive, and the will of Congress to act independently when neglected. It also reflects a strong nationalist political consensus against an unchecked UN role in the justice system, which must be addressed by any revised CICIACS agreement. We have encouraged the GOG and UN to seek an agreement which would strengthen the rule of law while addressing these concerns.

110. Action request: Continue to hold the funds for CICIACS that were notified to the Congress. Despite this serious setback, it is too soon to conclude that CICIACS cannot succeed.

HAMILTON